Sanwal Kunwar Vs. Murli

Sanwal Kunwar Vs. Murli

SooperKanoon Citation : sooperkanoon.com/476960

Court : Allahabad

Decided On : May-14-1912

Reported in : 16Ind.Cas.339

Judge : Piggott, J.

Appellant : Sanwal Kunwar

Respondent : Murli

Judgement :

Piggott, J.

1. This is a curious case and has had a curious history. The plaintiff is the proprietor of certain land which was leased to the defendant, as an agricultural tenant, for a period of seven years, from 1308 to 1314 Fasli, inclusive. There was a clause in the contract of lease to the following effect: That at the end of 1314 Fasli, the defendant would peacefully vacate the land in suit without raising any objection: and that in the event of his failing to do so, he should be liable to pay rent thereafter at the rate of Rs. 400 per annum. On the expiration of the prescribed period, the defendant did not vacate the land, and the plaintiff thereupon took proceedings against him for ejectment under the provisions of the Agra Tenancy Act (Local Act II of 1901). The defendant claimed the benefit of the provisions of Section 67 of that Act, and the Court concerned found in his favour on this point. It proceeded to determine further that the enhancement of rent which

could fairly and equitably be claimed under the provisions of that section was one of Rs. 5 only, i.e., from Ra. 200 to Rs. 205. There-after, the plaintiff brought this present suit, in the Court of an Assistant Collector, claiming Rs. 200 as rent due to him for the first-half of the year 1315 Fasli. The Assistant Collector apparently felt some difficulty about dealing with the suit, and the order actually passed by him was one returning the plaint for presentation before a Court of competent jurisdiction, namely, a Civil Court. It is a little difficult to understand how the Assistant Collector arrived at this conclusion, for the suit as brought was nothing more or less than a claim for arrears of rent alleged to be due in accordance with the terms of a certain contract of lease. However this may be, the plaintiff eventually presented the same plaint unaltered before the Court of the Munsif of Jalesar in the Aligarh District. That Court having in turn held it had no jurisdiction to entertain the suit, the matter finally came before this Court in second appeal. By this Court's order of May 19, 1911, the suit was remanded to the Court of the District Judge, Aligarh, with orders to dispose of the same under the provisions of Section 197 of the Agra Tenancy Act. The District Judge took up the case accordingly and has disposed of it by a careful and well considered judgment. He was evidently of opinion that the suit as brought was one for arrears of rent, and had been rightly instituted as such in the first instance in the Court of the Assistant Collector. Looking, however, at the suit from this point of view, the learned District Judge was of opinion that the Assistant Collector would have had no jurisdiction to go behind the previous order of a competent Revenue Court by which the rant of the land in suit had been fixed at Rs. 205 per annum. The District Judge actually disposed of the appeal before him entirely in accordance with this view of the case. He held it to be a matter which was res judicata between the parties; that the annual rent payable was Rs. 205 and the rent due for the period in suit was half of this, namely, Rs. 102- 8-0. He found it not to be proved that the defendant had paid any portion of this rent, and he accordingly decreed the plaintiff's claim for Rs. 102-8-0 only, with appropriate orders as to costs and interest. In the body of his judgment, the learned District Judge went somewhat further than this and also discussed the question whether the plaintiff would have been entitled to recover anything more than the sum of Rs. 102-8-0, upon a properly framed plaint, in which damages were claimed on account of breach of contract, the contract being,

of course, the covenant already referred to in the original lease by which the defendant bound himself under penalty to give up possession of the land in question after the close of the year 1314 Fasli. On this point, the learned District Judge found that there was no evidence on the record which would justify him in awarding by way of damages anything more than the sum of Rs. 102-8-0, which he was prepared to decree as arrears of rent. The matter has now once more been brought before this Court in second appeal. Except in so far as the memorandum of appeal raises objections to particular expressions made use of in the judgment of the lower Appellate Court, which are in no way essential to the decision arrived at, it may be said to raise only two points:

First, that the plaintiff was entitled under the terms of the contract of lease to recover rent at the rate claimed.

Secondly, that in any event, the plaintiff should have been awarded reasonable damages for breach of a particular stipulation embodied in that contract, and in this connection reference is made to the provisions of Section 74 of the Indian Contract Act.

2. This latter point may, think, be briefly disposed of. There is nothing in Section 197 of the Agra Tenancy Act which justifies a Court in turning a suit of one description into a suit of a totally different description. What a District Judge is bound to do under that section is to dispose of the appeal before him, as if the suit had been instituted in what would, in his opinion, have been the right Court to try the same. This is precisely what the District Judge has done in the present case. He has held that the suit is essentially one for arrears of rent and he has disposed of the appeal as if the suit then before him, had been instituted in the right Court, namely, the Court of an Assistant Collector. Apart from this, if I were of opinion that any question of a decree for damages on account of breach of contract could be raised upon the present suit as framed, I should be bound, as a Court of second appeal, by the finding of the learned District Judge that no damages were proved.

3. Now, I take up the main question in the appeal, namely, whether the plaintiff ought in fact to be permitted to enforce the covenant according to its terms and to

claim rent for the year 1315 Fasli at the stipulated rate of Rs. 400. We here touch the fringe of a very large question, namely, how far, and in what manner, is it permissible for a landlord and tenant, when entering into a contract of lease under which the tenant is to hold possession for a term of not less than seven years, to contract themselves out of the special provisions of Section 67 and other connected sections of the Agra Tenancy Act. 1 have come to the conclusion that it is unnecessary for the determination of this appeal to enter into a general discussion of this question, and that it would not, therefore, be expedient for me to do so. I incline, however, to the opinion that a contract in the particular form taken by the lease now before me is open to objection, under the provisions of Section 23 of the Indian Contract Act (IX of 1872); and that the particular stipulation by which the defendant purported to bind himself to pay rent for the land in suit at the rate of Rs. 400 per annum for an unspecified future period, and avowedly as a penalty, in the event of his failing to give up possession voluntarily, is 'unlawful' within the meaning of that section, as being of such a nature, that, if permitted, it would defeat the provisions of Section 67 of the Agra Tenancy Act. I do not, however, base my decision entirely upon this finding. The question whether the contract to pay/rent at this enhanced rate was or was not enforceable, was a question which necessarily had to be brought to trial in the first instance before the Revenue Court which had jurisdiction to determine the same. It was so brought to trial in the course of the ejectment proceedings, and the decision went against the plaintiff. I agree with the learned District Judge in holding that the decision of the Revenue Court in the course of those proceedings, whereby the rent ' of the land in suit was fixed at Rs. 205 per annum, operates as res judicata between the parties, and bars the plaintiff from claiming rant at any higher rate. This appeal, therefore, fails and I accordingly dismiss it with costs.